

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

STEAKHOUSE SEATTLE, LLC and
JAMES NATIONS

Plaintiffs,

v.

UNITED STATES

Defendant.

)
)
) Civil Action No.
) **3:18-CV-05751-BHS**
)
) **COMBINED JOINT STATUS**
) **REPORT AND DISCOVERY**
) **PLAN PURSUANT TO FRCP**
) **26(F) AND LOCAL CIVIL**
) **RULE 26(F)**

Pursuant to the Federal Rule of Civil Procedure (“FRCP”) 26(f), Local Civil Rule (“LCR”) 26(f); the Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement (Dkt. # 8), Plaintiffs Steakhouse Seattle and James Nations (“Plaintiffs”) and Defendant United States of America., (“Defendant”) respectfully submit this Joint Status Report and Discovery Plan pursuant to the Court’s order.

1
2 **1. NATURE AND COMPLEXITY OF CASE**

3 This action is one for judicial review of a Final Agency Decision (“FAD”) of
4 USDA’s Food and Nutrition Service (“FNS”) that concluded that Steakhouse Seattle, a
5 SNAP-authorized retail food store located in this judicial district, engaged in trafficking in
6 Supplemental Nutrition Assistance Program (“SNAP”) benefits in violation of FNS’s SNAP
7 regulations. After administratively charging Steakhouse Seattle with trafficking, in violation
8 of its SNAP regulations, on January 24, 2018, FNS issued its initial determination
9 permanently disqualifying Steakhouse Seattle and its owner, James Nations, from
10 participation in SNAP after concluding that one instance of trafficking in SNAP benefits
11 took place. Steakhouse Seattle sought administrative review of FNS’s permanent
12 disqualification determination. On administrative review, FNS affirmed this initial
13 determination and issued its FAD. In the FAD, FNS concluded that Steakhouse Seattle, on
14 March 22, 2012, trafficked in SNAP benefits by providing \$50.00 in cash, in addition to a
15 case of steaks, to a USDA undercover investigator in exchange for \$250.01 in SNAP
16 benefits. The Plaintiffs deny that trafficking took place and have alleged that any cash
17 provided to USDA’s investigator took place after the completion of the SNAP transaction
18 and was from the personal funds of Steakhouse Seattle’s driver.
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20
21

22 The FNS finding that Plaintiffs trafficked in food stamps is subject to *de novo* review
23 by the Court. 7 U.S.C. § 2023(a)(15). The parties do not believe that this action is
24 particularly complex as the factual and legal disputes are few and revolve largely around
25 whether the exchange of cash that took place on March 22, 2012, constitutes trafficking or
26 was a personal gift from Steakhouse Seattle’s driver to the undercover investigator unrelated

1 to the SNAP transaction. Plaintiffs bear the burden of demonstrating by a preponderance of
2 the evidence that the alleged violation (i.e. the trafficking) did not occur.

3 **2. JOINDER OF ADDITIONAL PARTIES**

4 At this time, the parties believe that all proper parties are currently parties to this
5 action. To the extent that a joinder deadline should be set, the parties propose February 28,
6 2019.

7 **3. ASSIGNMENT OF MAGISTRATE**

8 No.

9 **4. DISCOVERY PLAN**

10 (A) INITIAL DISCLOSURES. The parties served Initial Disclosures on
11 December 10, 2018, in accordance with this Court's Order, dated September
12 18, 2018. The United States has advised that it intends to supplement its
13 Initial Disclosures.

14 (B) SUBJECTS, TIMING, AND POTENTIAL PHASING OF DISCOVERY. At
15 this time, the Plaintiffs have served Requests for Admissions and Requests for
16 Production of Records. The Plaintiffs anticipate serving interrogatories in the
17 near future. Defendant also anticipates serving written discovery in this
18 matter. The parties also anticipate taking a limited number of depositions
19 (including one 30(b)(6) deposition to be taken by Plaintiffs of designee by the
20 United States) during the first quarter of 2019. The parties do not believe that
21 phased discovery is necessary or appropriate in this case.

22 (C) ELECTRONICALLY STORED INFORMATION. The parties do not believe
23 that this action will involve the exchange of substantial amounts of
24

Electronically Stored Information (ESI). Both parties have instituted litigation holds to prevent the destruction of records related to this action. To the extent that ESI will be exchanged, the parties do not foresee any issues related thereto.

(D) PRIVILEGE ISSUES. The parties do not foresee any issues related to privilege and have tentatively agreed that communications between undersigned counsel and the parties which relate to legal advice are presumptively privileged and need not be listed on a privilege log.

(E) PROPOSED LIMITATIONS ON DISCOVERY. None.

(F) NEED FOR DISCOVERY RELATED ORDER. The Plaintiffs are seeking information from the Defendant which may contain personal identifying information (“PII”) of the Plaintiffs and persons affiliated with the Plaintiffs which should not be publicly disclosed. Additionally, the United States may contend that the names of government employees or contractors that the United States should not be publicly disclosed. The Food and Nutrition Act also prohibits the discovery of certain information related to the SNAP program. Based thereof, the parties foresee the need for the prompt entry of a protective order governing the use of such information.

5. THE PARTIES’ VIEWS ON LOCAL RULE 26(f)(1) TOPICS:

A. PROMPT CASE RESOLUTION. The Parties believe that any amicable resolution of this matter is most likely to occur following the conclusion of discovery.

B. ALTERNATIVE DISPUTE RESOLUTION. The parties believe that

1 mediation of this matter may be beneficial following the conclusion of
2 discovery.

3 C. RELATED CASES. None.

4 D. DISCOVERY MANAGEMENT. At this time, the parties do not believe that
5 a discovery management order is necessary.

6
7 E. ANTICIPATED DISCOVERY MOTIONS. The Plaintiffs anticipate that
8 motion practice may be required in connection with their requests for USDA
9 and FNS policies, guidance, memoranda, and related issuances concerning
10 undercover SNAP trafficking investigations and related matters and for the
11 deposition of a 30(b)(6) designee regarding USDA and FNS policies,
12 guidance, and related issues concerning undercover SNAP trafficking
13 investigations.

14
15 F. PHASING MOTIONS. The parties do not anticipate substantial motion
16 practice, other than set forth in 5(E) *supra*, prior to summary judgment
17 motions.

18 G. PRESERVATION OF DISCOVERABLE INFORMATION. All parties have
19 instituted litigation holds and do not anticipate issues related thereto.

20 H. PRIVILEGE ISSUES. None.

21
22 I. MODEL PROTOCOL FOR DISCOVERY OF ESI. The parties agree to
23 utilize the Model Protocol for Discovery of ESI. If modifications thereto are
24 required or appropriate, the parties anticipate reaching an agreement thereon
25 without the need for judicial intervention or motion practice.

26 J. ALTERNATIVES TO MODEL PROTOCOL. Not Applicable.

1 **6. COMPLETION OF DISCOVERY**

2 May 31, 2019.

3 **7. BIFURCATION**

4 No.

5 **8. PRETRIAL STATEMENT AND ORDER**

6 The parties believe that pretrial statements and pretrial order should not be dispensed
7 with. The parties respectfully request the right to jointly seek relief therefrom if doing so
8 would be in the interests of justice and economy.
9

10 **9. CASE SIMPLIFICATION**

11 No.

12 **10. TRIAL READINESS**

13 The parties anticipate that the case will be ready for trial by December 1, 2019.
14

15 **11. JURY TRIAL**

16 Non-jury.

17 **12. LENGTH OF TRIAL**

18 Three days.
19

20 **13. NAMES, ADDRESSES, AND TELEPHONE NUMBER OF TRIAL COUNSEL.**

21 Stewart D. Fried, Esq.
22 OFW Law
23 2000 Pennsylvania Avenue, NW
24 Suite 3000
25 Washington, DC 20006
26 (202) 518-6326
(Address is effective January 1, 2019)

Virginia Nicholson, Esq., WSBA #39601

Schwabe, Williamson & Wyatt, P.C.
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
(206) 622-1711

Kristen Vogel, Esq.
Assistant U.S. Attorney
Office of the U.S. Attorney for the Western District of Washington
700 Stewart Street
Seattle, WA 98101
(206) 553-7970

14. POTENTIAL TRIAL CONFLICTS

None.

15. SERVICE OF DEFENDANTS

All Defendants have been served at this time.

16. SCHEDULING CONFERENCE

The parties do not request a scheduling conference at this time.

17. DATES OF FILING OF RULE 7.1 DISCLOSURE STATEMENT

Plaintiff Steakhouse Seattle filed its Rule 7.1 Disclosure Statement on September 20, 2018.

Dated this 17th day of December 2018.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/Virginia R. Nicholson
Virginia R. Nicholson, WSBA #39601
Email: vnicholson@schwabe.com
By: /s/Derrick De Vera
Derrick De Vera, WSBA #49954
Email: ddevera@schwabe.com
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Tel: 206.622.1711
Fax: 206.292.0460

1 By: /s/ Stewart D. Fried
2 Stewart D. Fried, Esq.
3 *Admitted Pro Hac Vice*
4 Olsson Frank Weeda Terman Matz PC
5 600 New Hampshire Avenue, N.W. #500
6 Washington, D.C. 20037
7 sfried@ofwlaw.com
8 Tel: (202) 518-6326
9 Fax: (202) 234-3550

10 *Attorneys for Plaintiffs*

11 ANNETTE L. HAYES
12 United States Attorney

13 *s/ Kristen R. Vogel*
14 KRISTEN R. VOGEL, NYBA #5195664
15 Assistant United States Attorney
16 United States Attorney's Office
17 700 Stewart Street, Suite 5220
18 Seattle, Washington 98101-1271
19 Phone: 206-553-7970
20 Fax: 206-553-4067
21 Email: kristen.vogel@usdoj.gov

22 *Attorney for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that this 17th day of December 2018, a true and correct copy of the foregoing Joint Status Report was sent to all counsel of record via ECF/CM.

/s/ Stewart D. Fried
Stewart D. Fried